

104TH CONGRESS
2D SESSION

H. R. 3585

To amend title XVIII of the Social Security Act to provide for coverage of respite care services under part B of the Medicare program, to amend the Internal Revenue Code of 1986 to treat qualified long-term care services as medical care, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 1996

Mrs. LOWEY (for herself and Mr. GILMAN) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to provide for coverage of respite care services under part B of the Medicare program, to amend the Internal Revenue Code of 1986 to treat qualified long-term care services as medical care, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Caregiver Sup-
5 port and Protection Act of 1996”.

1 **SEC. 2. COVERAGE OF RESPITE CARE SERVICES UNDER**
 2 **MEDICARE.**

3 (a) IN GENERAL.—Section 1861(s)(2) of the Social
 4 Security Act (42 U.S.C. 1395x(s)(2)) is amended—

5 (1) by striking “and” at the end of subpara-
 6 graph (N);

7 (2) by striking “and” at the end of subpara-
 8 graph (O); and

9 (3) by inserting after subparagraph (O) the fol-
 10 lowing new subparagraph:

11 “(P) respite care services (as defined in sub-
 12 section (oo)); and”.

13 (b) SERVICES DESCRIBED.—Section 1861 of such
 14 Act (42 U.S.C. 1395x) is amended by adding at the end
 15 the following new subsection:

16 “Respite Care Services

17 “(oo)(1)(A) Subject to subparagraph (C), the term
 18 ‘respite care services’ means any of the services described
 19 in subparagraph (B) which are furnished to an eligible in-
 20 dividual (as described in paragraph (2)) for the support
 21 of a caregiver described in paragraph (2) at the individ-
 22 ual’s home or in the community on a short-term, intermit-
 23 tent, or emergency basis by an individual or entity who
 24 meets such standards as the Secretary may establish.

25 “(B) The services described in this subparagraph are
 26 as follows:

1 “(i) Companion services.

2 “(ii) Homemaker services.

3 “(iii) Personal assistance.

4 “(iv) Community day services.

5 “(v) Temporary care in an accredited or li-
6 censed residential facility.

7 “(C) In establishing standards pursuant to subpara-
8 graph (A) for individuals and entities providing respite
9 care services, the Secretary shall consult with organiza-
10 tions representing providers of the services described in
11 such paragraph and organizations representing individuals
12 who typically receive such services.

13 “(D) The term ‘respite care services’ does not include
14 any services furnished to an individual during a 12-month
15 period after the individual has been furnished 120 hours
16 of such services during such period.

17 “(2) An ‘eligible individual’ described in this para-
18 graph is an individual with functional limitations (as de-
19 scribed in paragraph (3)) who is dependent on a daily
20 basis on a caregiver who—

21 “(A) has primary responsibility for providing
22 care to the individual;

23 “(B) does not receive financial remuneration for
24 providing such care; and

1 “(C) has provided such care for a period of not
2 less than 3 consecutive months.

3 “(3)(A) In paragraph (2), an ‘individual with func-
4 tional limitations’ is an individual who is certified (in ac-
5 cordance with such criteria as the Secretary may establish
6 consistent with subparagraph (C)) as—

7 “(i) being unable to perform without substantial
8 assistance from another individual (including assist-
9 ance involving verbal reminding or physical cueing)
10 at least 2 of the activities of daily living described
11 in subparagraph (B) for a period of at least 90 days
12 due to a loss of functional capacity or to cognitive
13 or other mental impairment;

14 “(ii) requiring substantial supervision to protect
15 the individual from threats to the individual’s health
16 or safety due to substantial cognitive or other men-
17 tal impairment; or

18 “(iii) having a level of disability similar (as de-
19 termined by the Secretary) to the level of disability
20 described in clause (i) or (ii).

21 “(B) The activities of daily living described in this
22 subparagraph are as follows:

23 “(i) Eating.

24 “(ii) Toileting.

25 “(iii) Transferring.

1 “(iv) Bathing.

2 “(v) Dressing.

3 “(vi) Continence.

4 “(C) In establishing criteria pursuant to subpara-
5 graph (A) for the certification of individuals with func-
6 tional limitations, the Secretary may not require that such
7 certification be performed only by a physician.”.

8 (c) PAYMENT ON HOURLY BASIS.—Section 1833 of
9 such Act (42 U.S.C. 1395l) is amended by inserting after
10 subsection (o) the following new subsection:

11 “(p) Payment for respite care services shall be paid
12 on the basis of an hour of such services provided.”.

13 (d) CONFORMING AMENDMENT.—Section 1862(a) of
14 such Act (42 U.S.C. 1395y(a)) is amended—

15 (1) by striking “or” at the end of paragraph
16 (14);

17 (2) by striking the period at the end of para-
18 graph (15) and inserting “; or”; and

19 (3) by inserting after paragraph (15) the fol-
20 lowing new paragraph:

21 “(16) in the case of respite care services, which
22 are furnished to an individual during a 12-month pe-
23 riod after the individual has been furnished 120
24 hours of such services during such period.”.

1 (e) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to services furnished on or after
 3 January 1, 1997.

4 **SEC. 3. TREATMENT OF LONG-TERM CARE SERVICES AS**
 5 **MEDICAL CARE.**

6 (a) GENERAL RULE.—Paragraph (1) of section
 7 213(d) (defining medical care) is amended by striking
 8 “or” at the end of subparagraph (B), by striking the pe-
 9 riod at the end of subparagraph (C) and inserting “, or”,
 10 and by adding at the end the following new subparagraph:

11 “(D) for qualified long-term care services
 12 (as defined in subsection (f)).”

13 (b) DEFINITION OF QUALIFIED LONG-TERM CARE
 14 SERVICES.—Section 213 of such Code is amended by add-
 15 ing at the end the following new subsection:

16 “(f) QUALIFIED LONG-TERM CARE SERVICES.—For
 17 purposes of this section—

18 “(1) IN GENERAL.—The term ‘qualified long-
 19 term care services’ means necessary diagnostic, pre-
 20 ventive, therapeutic, curing, treating, mitigating, and
 21 rehabilitative services, and maintenance or personal
 22 care services, which—

23 “(A) are required by a chronically ill indi-
 24 vidual, and

“(B) are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

“(2) CHRONICALLY ILL INDIVIDUAL.—

“(A) IN GENERAL.—The term ‘chronically ill individual’ means any individual who has been certified by a licensed health care practitioner as—

“(i) being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to a loss of functional capacity or to cognitive impairment,

“(ii) requiring substantial supervision to protect such individual from threats to health or safety due to substantial cognitive impairment, or

“(iii) having a level of disability similar (as determined by the Secretary in consultation with the Secretary of Health and Human Services) to the level of disability described in clause (i) or (ii).

Such term shall not include any individual otherwise meeting the requirements of the preced-

1 ing sentence unless within the preceding 12-
2 month period a licensed health care practitioner
3 has certified that such individual meets such re-
4 quirements.

5 “(B) ACTIVITIES OF DAILY LIVING.—For
6 purposes of subparagraph (A), each of the fol-
7 lowing is an activity of daily living:

8 “(i) Eating.

9 “(ii) Toileting.

10 “(iii) Transferring.

11 “(iv) Bathing.

12 “(v) Dressing.

13 “(vi) Continence.

14 “(C) SUBSTANTIAL ASSISTANCE.—For
15 purposes of subparagraph (A)(i), the term ‘sub-
16 stantial assistance’ includes verbal reminding or
17 physical cuing.

18 “(3) MAINTENANCE OR PERSONAL CARE SERV-
19 ICES.—The term ‘maintenance or personal care serv-
20 ices’ means any care the primary purpose of which
21 is the provision of needed assistance with any of the
22 disabilities as a result of which the individual is a
23 chronically ill individual (including the protection
24 from threats to health and safety due to severe cog-
25 nitive impairment).

1 “(4) LICENSED HEALTH CARE PRACTI-
2 TIONER.—The term ‘licensed health care practi-
3 tioner’ means any physician (as defined in section
4 1861(r)(1) of the Social Security Act) and any reg-
5 istered professional nurse, licensed social worker, or
6 other individual who meets such requirements as
7 may be prescribed by the Secretary.”

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 1995.

○